IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 26 of 1991
WITH
INCOME TAX REFERENCE No 164 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ASHOKA MILLS LTD

NUTAN MILLS LTD.

Appearance:

MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
MR JP SHAH FOR MR.MANISH J.SHAH for Respondent -
(IN INCOME TAX REFERENCE NO.26 OF 1991).

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/09/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In Income Tax Reference No.26 of 1991, the following questions have been referred for the opinion of this Court in respect of the assessment year 1979-80 :

(1) "Whether, the Appellate Tribunal has not erred in law and on facts of the case in deleting the disallowance of excise duty of Rs.12,58,882/- ?

(2) Whether, the claim of allowance of Rs.12,58,882/of the assessee made on the basis of mere show cause notices from excise department and which were challenged in litigation, is allowable as claimed ?"

2 In Income Tax Reference No. 164 of 1994, the following questions have been referred for the opinion of this Court in respect of assessment year 1979-80 :

(1) "Whether, the assessee is entitled to allowance of Excise claim liability of Rs.4,96,957/- for A.Y.1979-80 when the excise authorities had only issued show cause notices and the claim was disputed by the assessee ?

(2) Whether, when no determination was made in respect of the excise liability and demand was raised by show cause notice which were disputed, the claim of allowance made by the assessee was justified ?"

3 We have heard Mr.B.B.Nayak for the revenue in both the references. We have heard Mr.J.P.Shah, learned Counsel for the respondent-assessee in Income Tax Reference No.26 of 1991. In Income Tax Reference No.164 of 1994 none appears for the respondent-assessee though served.

4 Having heard the learned Counsel for the parties, we dispose of these two references by this common judgment as they raise common question as to when the assessee is entitled to the allowance of excise duty and whether such allowance can be claimed when the excise authority had merely issued a show cause notice. In the accounting year under consideration, the excise department merely issued a show cause notice, the claim was contested by the assessee and no final orders of adjudication were passed by the excise department i.e.

the demand notices were not issued in the accounting year under consideration. The learned Counsel for the parties have invited our attention to the fact that the controversy raised in both these references is concluded by this Court in Income Tax Reference No.121 of 1989 decided on 15/2/2001. After considering the decision of the Apex Court in C.I.T. Vs. Bharat Carbon and Ribbon Manufacturing Co.Ltd. (1999) 239 ITR 505, this Court has held that the liability to pay excise duty accrues when the Excise Department passes the adjudication order.

5 In the aforesaid decision we have also considered the decision of the Supreme Court in J.K.Cotton Mills vs. Union of India, AIR 1988 SC 191, wherein the Supreme Court held in favour of the Textile Mills and quashed the show-cause notices for claiming excise duty at the sizing stage.

6 In view of the finding given by the authorities as well as the Tribunal that only show cause notices were issued in the accounting year in question in respect of these assesses and no orders of adjudication were made, we answer all the questions in the negative i.e. in favour of the revenue and against the assessee.

7 The references are disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt